

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FRITZ DAIRY FARM, L.L.C., et al.,	)	Case No.: 5:12-cv-1736
	)	
Plaintiffs	)	Judge:
	)	
v.	)	
	)	
CHESAPEAKE EXPLORATION, L.L.C., et al.,	)	
	)	
Defendants.	)	

**NOTICE OF REMOVAL**

Defendants Chesapeake Exploration, L.L.C. (“Chesapeake”), Richard Owen, and Kenyon Energy, L.L.C. (“Kenyon”) (collectively “Defendants”), hereby remove the state court action captioned *Fritz Dairy Farm, L.L.C., et al. v. Chesapeake Exploration, L.L.C., et al.*, Case No. 12-CVH-27184, from the Carroll County, Ohio, Court of Common Pleas to the United States District Court for the Northern District of Ohio. This Notice of Removal has been timely filed in accordance with 28 U.S.C. §§ 1441 and 1446 and is based on the existence of diversity jurisdiction under 28 U.S.C. § 1332. In support of this notice of removal, Defendants state as follows:

**I. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE MET.**

1. On June 4, 2012, Plaintiffs Fritz Dairy Farm L.L.C., Mark R. Fritz, and Michele E. Fritz (collectively “Plaintiffs”), filed a Complaint in the Court of Common Pleas for Carroll County, Ohio, captioned *Fritz Dairy Farm, L.L.C., et al. v. Chesapeake Exploration, L.L.C., et al.*, Case No. 12-CVH-27184 (the “State Court Action”). In accordance with 28 U.S.C. § 1446(a), true and accurate copies of the Summons and Complaint, which constitute all of the

process, pleadings, and orders served upon Defendants in the State Court Action are attached hereto as Exhibit A.

2. Chesapeake received a copy of the summons and complaint on June 8, 2012, via certified mail. The complaint is the initial pleading setting forth the claim for relief upon which the action is based. *See* 28 U.S.C. § 1446(b).

3. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b) because it is filed within 30 days of the last-served defendant's receipt of the summons and complaint. *Id.*

## **II. REMOVAL IS PROPER UNDER 28 U.S.C. 1332(a).**

4. This Court has subject matter jurisdiction over the complaint under 28 U.S.C. § 1332 because this is a civil action between citizens of different states in which the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

### **A. There Is Complete Diversity of Citizenship.**

5. There is complete diversity of citizenship because all Plaintiffs are citizens of a different state than all Defendants.

6. For purposes of diversity jurisdiction, a limited liability company's citizenship is determined by the citizenship of all of its members. *See Homfeld II, L.L.C. v. Comair Holdings, Inc.*, 53 F. App'x 731 (6th Cir. 2002).

7. As set forth in the Complaint, Plaintiffs are two individuals and a limited liability company. The two individuals, Mark R. Fritz and Michele E. Fritz, are both residents of the State of Ohio. (*See* Complaint, caption.) The limited liability company, Fritz Dairy Farm, L.L.C., is organized and existing under the laws of the State of Ohio, with its sole member being Mark R. Fritz, a resident of the State of Ohio. *See Exhibit B*. For purposes of diversity jurisdiction, Fritz Dairy Farm, L.L.C., is a citizen of the state of Ohio.

8. Chesapeake is a limited liability company organized and existing under the laws of the state of Oklahoma, with its principal place of business in Oklahoma City, Oklahoma. (*See* Declaration of Joseph A. Tarantelli (“Tarantelli Decl.”) ¶ 3, attached as Exhibit C.) Chesapeake Exploration, L.L.C., has three members:

- a. Chesapeake Operating, Inc., a corporation organized and existing under the laws of the state of Oklahoma, with a principal place of business in Oklahoma City, Oklahoma.
- b. Chesapeake E&P Holding Corporation, a corporation organized and existing under the laws of the state of Oklahoma, with a principal place of business in Oklahoma City, Oklahoma.
- c. Chesapeake Appalachia, L.L.C., a limited liability company organized and existing under the laws of the state of Oklahoma. Chesapeake Appalachia, L.L.C.’s sole member is Chesapeake Energy Corporation, a corporation organized and existing under the laws of the state of Oklahoma with a principal place of business in Oklahoma City, Oklahoma.

(*See* Tarantelli Decl. ¶ 4.) Therefore, for diversity purposes, Chesapeake Exploration, L.L.C., is a citizen of the state of Oklahoma.

9. Kenyon is a limited liability company organized and existing under the laws of the State of Ohio, with its principal place of business in North Canton, Ohio. (*See* Declaration of Michael V. To (“To Decl.”) ¶ 3, attached as Exhibit D.) Kenyon Energy, L.L.C., has two members:

- a. Phil Lowry, an individual who resides in the state of Oklahoma.
- b. Brenda Lowry, an individual who resides in the state of Oklahoma.

(See To Decl. ¶¶ 4.a., 4.b.) Thus, for diversity purposes, Kenyon is a citizen of the state of Oklahoma.

10. Richard Owen is an individual who is a citizen of the state of Oklahoma. (See Declaration of Richard Owen (“Owen Decl.”) ¶¶ 4–5, attached as Exhibit E.)

**B. The Amount in Controversy Exceeds the Jurisdictional Minimum of \$75,000.**

10. When examined in combination, the amount of compensatory and punitive damages requested by Plaintiffs is in excess of the jurisdictional minimum of \$75,000.00. See 28 U.S.C. §§ 1332(a), 1441; *Hayes v. Equitable Energy Res. Co.*, 266 F.3d 560, 572 (6th Cir. 2001) (holding that punitive damages must be included when evaluating amount in controversy).

11. Plaintiffs filed their complaint seeking declaratory judgment, compensatory damages exceeding \$25,000.00<sup>1</sup> and punitive damages of \$25,000.00. Plaintiffs’ claims are associated with two Oil and Gas Leases between Plaintiffs and Kenyon, each dated July 27, 2010, covering a total of 142.285 acres, more or less, both in Carroll County, Ohio (the “Leases”). As described in the complaint, the leases arise out of a single transaction between Plaintiffs and Kenyon.

12. In a declaratory judgment action, the amount in controversy for diversity purposes is determined by the value of the “object of the litigation.” *Hunt v. Wash. State Adver. Comm’n*, 432 U.S. 333, 347 (1977); see also *Northup Props., Inc. v. Chesapeake Appalachia, L.L.C.*, 567 F.3d 767, 770 (6th Cir. 2009). Because Plaintiffs are seeking to void the leases through this action, the value of the leases to Chesapeake Exploration should be utilized to determine the object of the litigation.

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<sup>1</sup> Though not expressly stated in the Complaint, any amount of compensatory damages Plaintiffs seek under the causes of action in the Complaint are most certainly based on current market values for the Leases. As established, *infra*, in assessing the value of the object of the litigation, that amount, in and of itself, greatly exceeds the jurisdictional minimum of \$75,000.00.

13. The exact amount paid to Plaintiffs as bonus consideration for the Leases is confidential, but the amount exceeded \$100,000.00. (*See* Declaration of Grant Parker (“Parker Decl.”) ¶ 8, attached as Exhibit F.) Additionally, the current fair market value for a 142.285-acre lease in the area of Carroll County where the leased premises are located also greatly exceeds the jurisdictional minimum of \$75,000.00. (*See* Parker Decl. ¶ 7.)

14. Accordingly, the value of the Leases to Chesapeake Exploration, either based on the acquisition cost or the fair market value, exceeds \$100,000.00, and thus the amount in controversy exceeds the jurisdictional minimum under the “object of the litigation” test as well.

### **III. COMPLIANCE WITH OTHER STATUTORY REQUIREMENTS**

15. Pursuant to 28 U.S.C. § 1446(d), Defendants will provide written notice of the removal of this action to Plaintiffs, through their attorney of record, and to the Clerk of Courts, Court of Common Pleas, Carroll County, Ohio.

WHEREFORE, Defendant requests that the above action now pending against it in the Carroll County, Ohio, Court of Common Pleas be removed to this Court.

Respectfully submitted,

/s/ Timothy B. McGranor

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*Exploration, L.L.C., and Kenyon Energy, L.L.C.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing *Notice of Removal* was served via U.S. mail this 6th day of July 2012 upon the following:

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*Attorney for Plaintiffs*

/s/ Timothy B. McGranor

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